Supreme Court, U.S.
FILED

No.

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OFFICE OF THE CLERK

In The

Supreme Court of the United States

Dennis William Wilde, Petitioner

VS.

United States Air Force, Respondents

On Petition for a Writ of Certiorari to
United States District Court Western District of Louisiana

Petition for Writ of Certiorari

Dennis William Wilde Pro se
8934 Marlow Drive
Shreveport, Louisiana 71118
318-687-7744

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38 pp

QUESTIONS PRESENTED

I.

Do veterans forfeit all civil and constitutional rights as part of their enlistment?

II.

Does the Feres Doctrine deny veterans equal protection under the law?

III.

Is it lawful under the Feres Doctrine for the Department of Defense to deny military personnel records from a veteran for 37 years thereby denying due process?

IV.

Does the Feres Doctrine allow the military to surgically remove a healthy viable body part for the soul purpose of human medical research without informed consent and deny all in-service connection without an avenue of re-dress?

LIST OF PARTIES

United States Air Force

United States Department of Defense

United States Department of Veterans

United States Attorney Western District

of Louisiana

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CASES

Brown V. United States

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Feres V. United States

STATUTES AND RULES

28 U.S.C. 2401 (b)

28 U.S.C. 1346 (b)

10 U.S.C. Sec. 1552

OTHER

Nuremburge Code (1953 Military Directive)

(Informed Consent)

Universal Declaration of Human Rights (1948)

IN THE

SUPREME COURT

OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to the judgment of the United States District Court for the Western District of Louisiana, Shreveport, Louisiana appearing in APPENDIX A & B.

OPINIONS BELOW

INDEX TO APPENDICES

APPENDIX A: Order denying reconsideration by United States Court of Appeals for the Fifth Circuit.

APPENDIX B: Order to Dismiss from United States District Court Western District of Louisiana

APPENDIX C: Report and Recommendation by the United States Court Western District of Louisiana

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APPENDIX E: Appeal from the United States District Court for the Western District of Shreveport, Louisiana.

APPENDIX F: – Order on appellant's motion to reinstate.

JURISDICTION

The jurisdiction is involked under 28 U.S.C. 1254 (1)

(A) A petition for rehearing was denied by the United States Court of Appeals on March 22, 2000.

(B) A Judgment was entered in District Court Dismissing on August 23, 1999.

(C) A Report and Recommendation was rendered in District Court on July 7, 1999.

(D) Air Force Board for Correction of Military Records Title 10 U.S.C. Sec. 1552.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In the District Court Western District of Louisiana the application of the Feres Doctrine was improperly applied and a judgment was entered August 23, 1999 denying this veteran a court trial date.

The Feres Doctrine specifically states the right of those veterans on leave of duty, involved in activities unrelated to training or a veterans unit to seek relief.

The Feres Doctrine also acknowledges the unique method of the governments way of redress for veterans other than the FTCA. However, when that forum fails to recognize a just claim, is it then the right under the Feres Bar to deny the veteran another forum for redress?

STATEMENT OF THE CASE

With the signature of my legal guardian on 28 November 1960, I became an enlistee in the United States Air Force. On 21 December while stationed at Lackland Air force Base, Texas, I was removed from duty, separated from my unit, and transported to Brooks Research Facility for use as a subject in what I later discovered was a baseline subject study in human research. This research was designed to recognize stress in dental patients pre and post operative by measuring the corticol (ACTH) levels in the blood and urine. The subjects were not aware of the impending surgery as part of the experiment nor were they informed of any danger. Placebos were administered through injection with no anesthetic. A healthy viable first lower left molar tooth was extracted

and more blood and urine samples were taken periodically throughout the day. I became very ill and suffered from a severe infection. This infection triggered an immune disease which was ignored by the Air Force and the Veterans Administration for decades. The military medical records were denied to the veteran until 1997 by the Department of Defense. When the veteran became aware of the connection between this infection and the veteran's disease, he filed suit in District Court.

The court ruled that active military service precludes a veteran from suit under the Feres Doctrine. The court ignored the circumstance under which the veteran was removed from duty and his unit and that the Air Force had violated existing directives in order to do their research.

The veteran was required and did repeat the two weeks of training he missed due to this research. Orders were issued sending the veteran to a new unit and training schedule.

REASONS FOR GRANTING THE PETITION

I.

The District Court has improperly applied the law under the Feres Doctrine.

II.

The respondents have relied upon the courts to decide these claims and ignoring their own purpose mandated by law.

Claims for in-service compensation are dependant upon the veteran to prove his or her claim, that proof lies in the veterans military record, (personnel record, medical records, dates of entry and discharge, all pertinent information regarding one's time in the service). These records are kept by the Office of Personnel records administered by the Department of Defense. The

military is responsible for those records, mandated by law.

III.

Claims for the correction of the military record under Title 10 U.S.C. Sec. 1552 are dependant upon the veteran to prove his claim, this too is dependant upon the military record, the government mandates by law that these records be provided to the veteran upon request.

IV.

District Court ruled that active military service precludes one from suit under the Feres Bar, for in-service compensation, correction of military records, medical care, personal injury, and medical mal-practice by the Veterans Administration without any avenue to redress an agency for a disputed decision.

CONCLUSION

I cannot believe that the Supreme Court in its 1950 ruling in Feres V. United States was to be used by the military as a means to escape liability for behavior that is neither legal or moral. The removal of healthy teeth without the benefit of anesthesia for the purpose of medical research is an afront to individual civil liberties.

This court should grant this application to provide the lower courts with authoritative guidance on this issue.

Respectfully submitted, this

22nd day of June, 2000.

Dennis William Wilde Pro se

8934 Marlow Drive

Shreveport, Louisiana 71118

APPENDIX A

NOT DESIGNATED FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-31082

DENNIS WILLIAM WILDE
Plaintiff - Appellant

v

US DEPARTMENT OF AIR FORCE; US DEPARTMENT OF DEFENSE; VETERANS ADMINISTRATION

Defendants - Appellees

U.S. Court of Appeals Filed March 22, 2000
Charles R. Fulbruge III Clerk

Appeal from the United States District Court for the
Western District of Louisiana, Shreveport

before JOLLY, JONES, and BENAVIDES,

Circuit Judges.

BY THE COURT:

A member of this panel has previously denied appellant's motion to reinstate the appeal. After consideration by this panel upon request of appellant, IT IS ORDERED that appellant's motion for reconsideration is DENIED.

MOT-29

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

Dennis William Wilde	Civil Action No. 99-0754
versus	Judge Stagg
U.S. Dept. of Defense et al.	Magistrate Judge Payne

JUDGMENT

For the reasons assigned in the Report and Recommendation of the Magistrate Judge previously filed herein, and having thoroughly reviewed the record, including the written objections filed, and concurring with the findings of the Magistrate Judge under the applicable law;

IT IS ORDERED that the Motion to Dismiss (Doc. 3) is **GRANTED**, and Plaintiff's case is **DISMISSED WITH PREJUDICE**.

THUS DONE AND SIGNED in chambers at Shreveport, Louisiana, this the 21st day of August, 1999.

Signed: Tom Stagg
UNITED STATES DISTRICT JUDGE

Filed Robert H. Shemwell, Clerk

JUDGMENT ENTERED

USDC, Western District Louisiana

DATED: 8/23/99

Signed By: Donna Hemp

COPY: Wilde Halliburton Date: August 23, 1999

APPENDIX C

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

Dennis William Wilde	Civil Action No. 99-0754
versus	Judge Stagg
U.S. Dept. of Defense et al.	Magistrate Judge Payne

REPORT AND RECOMMENDATION

Introduction

Dennis William Wilde ("Plaintiff") alleges that while he was enlisted in the United States Air Force in 1960 he was a non-consensual subject in a military experiment which began with the extraction of a healthy molar tooth. Plaintiff says that several blood and urine samples were also taken. Soon afterwards, he became ill and a lack of treatment triggered an immune response that

plagued him for several months. Plaintiff says that in July of 1961 he suffered a minor injury to his right hand which also triggered severe symptoms. Air Force physicians allegedly rendered a false diagnosis of conversion reaction. Plaintiff was then discharged from the military less than one year into a scheduled four-year tour of duty.

Plaintiff alleges that the Air force is liable for conducting medical experiments on him, denying him representation or not permitting him to appear at hearings held in the 1960's related to his separation from service, and not providing him with a copy of his medical records with which he could respond to the Air Force's evidence at those hearings that his problems were based on a psychological disorder. The Veterans Administration is said to be liable for medical

malpractice because in 1989 it ignored evidence of the true nature of Plaintiff's illness and attributed his problems to his mental health. The Department of Defense is accused of wrongfully refusing to release medical records (eventually obtained on May 12, 1997) that were first requested in 1961.

Plaintiff originally brought these allegations in Civil Action No. 97-127. The undersigned issued a ruling that the court lacked subject matter jurisdiction because Plaintiff had not filed an administrative claim prior to suit as required by the Federal Tort Claims Act. See 28 U.S.C. § 2675. That ruling was appealed and Judge Stagg affirmed it. See Civil Action No. 97-127, Docs. 28 and 35. Because the court lacked subject matter jurisdiction over the prior action, the undersigned noted that the court need not reach two alternate

grounds urged by the defendants as a basis for dismissal: (1) that the action is barred by the Feres doctrine and (2) that the action is barred by the limitations period contained in 28 U.S.C. § 2401 (b). Those defenses are again raised in this action by the defendant's Motion to Dismiss (Doc. 3). For the reasons that follow, it is recommended that the motion by granted.

Timeliness

Timeliness is an obvious issue. Plaintiff's principal allegations are that he was subjected to non-consensual medical experiments and other mistreatment in 1960 and 1961, more than 35 years prior to his filing of an administrative claim on April 9, 1998.[1]

[1] This date is based on the representation of the government in its memorandum in support of the motion. No documentary in evidence was submitted, but Plaintiff has not contested the date.

The most recent wrongdoing alleged is malpractice in 1989, 9 years before the administrative claim. "A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues." 28 U.S.C. § 2401 (b). Plaintiff seeks to excuse his late filing on the grounds that he did not have access to his military medical records until they were produced on or about May 12, 1997 during discovery conducted in the prior law suit. Plaintiff says that the records were the subject of more than 30 requests over the intervening years by him, legislators and veterans service organizations.

Although he does not use the words "equitable tolling," that is the legal doctrine that governs his response to the limitations defense.

The two-year limitations period of § 2401 (b) has often been referred to as jurisdictional. See Flory v. United States, 183 F.3d 157, 159 (5th Cir. 1998) ("it is well-settled that these limitation periods are jurisdictional."). The Fifth Circuit has recently recognized, however, that the Supreme Court's decision in Irwin v. Dept of Veterans Affairs, 498 U.S. 89, 111 S.Ct. 453 (1990) and its progeny compel the conclusion that equitable tolling is available to overcome the limitations period. Perez v. United States, 167 F.3d 913 (5th Cir. 1999). Irwin states that equitable tolling is permitted in situations such as where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where he has been tricked by misconduct into allowing the deadline to pass. If the claimant has

merely failed to exercise due diligence in preserving his rights the courts are much less forgiving. Irwin, 111 S.Ct. At 453.

Equitable tolling is not warranted or permitted in this case. Plaintiff may not have had all of the evidence that he would have liked, in the form of medical records, until 1997, but his own pleadings make clear that he has believed for more than a decade that he was the victim of malpractice and other wrongful actions by the government. A cause of action for medical malpractice brought under the Federal Tort Claims Act accrues when "the claimant discovered, or in the exercise of reasonable diligence should have discovered, the existence of the acts of malpractice upon which his claim is based." Quinton v. United States, 304 F.2d 234, 235 (5th Cir. 1962). That same accrual

standard applies to other federal claims that may not be immediately apparent to the victim. Dubose v Kansas City Southern Ry. Co., 729 F.2d 1026 (5th Cir. 1984), cert. denied, 469 U.S. 854, 105 S.Ct. 179 (1984) (FELA action based on long term exposure to lung irritants) Plaintiff knew of the facts that he alleges as the basis of his claims long before his receipt of the medical records. In fact, he knew enough of them to file a federal law suit in 1997. His claims are, therefore, time barred.

Feres Doctrine

The Feres doctrine also bars Plaintiff's claims for injuries suffered while he was a member of the service. In Feres v. United States, 340 U.S. 135, 71 S.Ct. 153 (1950) the Supreme Court held that members of the armed services could not sue

the Government for injuries that "arise out of or are in the course of activity incident to service." 71 S.Ct. At 159. The doctrine has been broadly applied and blocks even actions based on unauthorized activities or intentional torts. Gaspard v. United States, 713 F.2d 1097 (5th Cir. 1983), cert. denied, 466 U.S. 975, 104 S.Ct. 2354 (1984) (doctrine barred servicemen's FTCA and Bivens claims based upon radiation experiments conducted on them during their service); and Jaffe v. United States, 663 F.2d 1226 (3d Cir. 1981) (en banc) cert. denied, 456 U.S. 972, 102 S.Ct. 2234 (1982) (same). Accordingly, any claims by Plaintiff for in-service injuries, whether filed before or after his discharge, are barred by Feres. Gaspard, 713 F.2d at 1100.

Accordingly;

IT IS RECOMMENDED that the Motion to Dismiss (Doc. 3) be **GRANTED**, and that Plaintiff's case be **DISMISSED WITH PREJUDICE.**

Objections

Under the provisions of 28 U.S.C. § 636 (b) (1) (C) and Fed.R.Civ. Proc. 72 (b), parties aggrieved by this recommendation have ten (10) business days from service of this report and recommendation to file specific, written objections with the Clerk of Court, unless an extension of time is granted under Fed.R.Civ.P. 6 (b). A party may respond to another party's objections within ten (10) days after being served with a copy thereof. Counsel are directed to furnish a courtesy copy of any objections or responses to the District

Judge at the time of filing.

A party's failure to file written objections to the proposed findings, conclusions and recommendation set forth above, within 10 days after being served with a copy, shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. See Douglass v U.S.A.A., 79 F.3d 1415 (5th Cir. 1996) (en banc).

THUS DONE AND SIGNED at Shreveport, Louisiana, this the 7th day of July, 1999.

Signed: Roy S. Payne
United States Magistrate Judge

Filed: Robert H. Shemwell, Clerk

COPY SENT

USDC, WESTERN DISTRICT CLERK
DATE: 7/7/99
Signed By: M. Cassanova BY: RSP

Date: July 7, 1999

TO: WILDE

HALLIBURTON

J. STAGG

APPENDIX D

RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR
CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NO: 97-03378

DATED: 8/14/1998

DENNIS W. WILDE

COUNSEL: NONE

396-40-4752

HEARING DESIRE: YES

Applicant requests that his medical diagnosis be changed from Conversion Reaction to Reactive Arthritis. Applicant's submission is at Exhibit A.

The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the

application be denied (Exhibit C). The advisory opinion was forwarded to the applicant for review and response (Exhibit D). Applicant's response to the advisory opinion is at Exhibit E.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinion appear to be based on the evidence of record and have not been adequately rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

The Board staff is directed to inform applicant of this decision. Applicant should also informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Mr. David W. Mulgrew, Mr. Joseph G. Diamond, and Mr. Terry A. Yonkers considered this application on 21 July 1998 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.

Signed: David W. Mulgrew

Panel Chair

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 99-31082	U.S.Court of Appeals Filed
Dennis William Wilde	Dec 01 1999
Plaintiff - Appellant	Charles R. Fulbruge III
v.	Clerk

US Department of Air Force; US Department of Defense; Veterans Administration
Defendants - Appellees

Appeal from the United States District Court for the Western District of Louisiana, Shreveport

Clerk's Office:

Under 5th Cir. R. 42.3, the appeal is dismissed for want of prosecution for appellant's failure to file brief and record excerpts, within the time fixed by the rules, this date, December 1, 1999.

Charles R. Fulbruge III
Clerk of the United States Court of Appeals for the Fifth Circuit
By: Monica Washington, Deputy Clerk for the Court - By Direction

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 99-31082

Dennis William Wilde
Plaintiff - Appellant
v.
US Department of Air Force; US Department of Defense; Veterans Administration
Defendants - Appellees

Appeal from the United States District Court for the Western District of Louisiana, Shreveport

ORDER:

IT IS ORDERED that appellant's motion to reinstate the appeal is DENIED.

E. Grady Jolly
United States Circuit Judge